

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

FILED
SIXTH JUDICIAL CIRCUIT

JUN 27 2008

Linda S. Frank
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

SUBURBAN EXPRESS, LTD.,)
an Illinois Corporation,)
Plaintiff,)
v.)
LEX EXPRESS, INC.,)
an Illinois Corporation, and ROBERT FRAZIER)
Defendants.)

08-CH-256

COMPLAINT
Injunctive and Ancillary Relief

NOW COMES the Plaintiff, SUBURBAN EXPRESS, LTD, an Illinois Corporation, and for its Complaint against the Defendants, LEX EXPRESS, INC., an Illinois Corporation, and ROBERT FRAZIER, states and alleges as follows:

COUNT I- 815 ILCS 510/1 et. seq
(Deceptive Trade Practices)

1. That at all times relevant hereto, the Plaintiff, SUBURBAN EXPRESS, LTD, an Illinois Corporation, was engaged in the business of providing transportation services to members of the public, including, but not limited to, students at the University of Illinois.
2. That the Defendant, LEX EXPRESS, INC., was similarly engaged and in competition with the Plaintiff for ridership (customers) and Defendant Frazier was at all times relevant hereto an officer of said company and the person who directed the operations of LEX EXPRESS, INC., including the conduct complained of herein.

3. That at all times relevant hereto, the statutes of the State of Illinois prohibited the Defendant, and those acting in concert with it, from engaging in deceptive trade practices and defined those prohibited practices in relevant part as follows (815 ILCS 510/2)

§2. Deceptive trade practices.

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person:

- (1) passes off goods or services as those of another;
- (2) causes the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causes the likelihood of confusion or of misunderstanding as to affiliation, connection, or association with certification by another;
- (4) uses deceptive representations or designations of geographic origin in connection with goods or services;
- (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;
- (6) represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand.
- (7) represents that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another;
- (8) disparages the goods, services, or business of another by false or misleading representation of fact;
- (9) advertises goods or services with intent not to sell them as advertised.
- (10) advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (11) makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (12) engages in any other conduct which similarly creates likelihood of confusion or misunderstanding.

(b) In order to prevail in an action under this Act, a plaintiff need not prove competition between the parties or actual confusion or misunderstanding.

(c) This Section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this State.

4. That at all times relevant hereto 815 ILCS 510/3 provided that a person who is damaged by deceptive trade practices may be granted injunctive relief, costs, and attorney's fees.
5. That the Defendants, as more fully reflected herein, have engaged in a pattern of deceptive trade practices in an effort to compete with the Plaintiff, including, but not limited to, disseminating by commercial advertising, posting flyers, and otherwise communicating false, misleading, and deceptive claims regarding its services and its affiliations, including but not limited to, one or more of the following:
 - (a) Falsely and/or fraudulently claiming that its buses "leave every 90 minutes";
 - (b) falsely and/ or fraudulently claiming that its routes run "24 hours a day 365 days a year.";
 - (c) placing commercial advertising for periods of time knowing that such advertising is false, and misleading in that the rates, schedule, and other information contained therein will be untrue when published with the intent to "bait" the public.
 - (d) falsely and/ or fraudulently advertising that it runs every 90 minutes and fares of \$14.95 (EXH. 2-2);
 - (e) falsely and/ or fraudulently advertising that it runs 7 days a week, every 90 minutes (EXH. 3, 4-3, 5-2)
 - (f) falsely and/ or fraudulently advertising that it runs every 1.5 hours(90 minutes), 24 hours a day, 365 days a year (EXH. 1-1, 1-2, 4-4, 5-3, 9-1, 9-2);
 - (g) falsely and/ or fraudulently advertising that it runs every 3 hours, 24 hours a day, 365 days a year (EXH. 6, 7-2, 10, 12-2, 25, 27);
 - (h) falsely and/ or fraudulently advertising by posted signage that it runs every 3 hours, 24 hours a day (EXH. 11, 20);
 - (i) falsely and/ or fraudulently advertising unlimited baggage and then

- actually charging for the same (EXH. 3);
- (j) falsely and/ or fraudulently advertising free rides while subsequently disclaiming, altering, and failing to advise of conditions or limitations. (EXH. 1-1, 4-2, 5-3, 6, 7-2, 8-2, 9-1, 12-1, 16, 24-1, 24-2, 25, 26, 27, 28-2, 13, 14); and doing so in violation of 815 ILCS 505/2P
 - (k) falsely and/ or fraudulently advertising an affiliation, sponsorship, and association with the ISU (Braden) ticket office (EXH. 1-1, 4-2, 4-4); and the University of Illinois (EXH. 1-2, 4-5, 13, 14);
 - (l) falsely and/ or fraudulently advertising a safety record belied by its actual inspection record (EXH. 1-1, 4-4, 9-1, 22);
 - (m) falsely and/ or fraudulently advertising 24 hour live reservations (EXH. 6, 7, 8, 12-1, 29-1);
 - (n) falsely and/ or fraudulently engaging in disparaging of the Plaintiff (EXH. 5-2, 29-1, 29-6);
 - (o) offering incentives to individuals, including “free” transportation to tear down posters advertising Plaintiff’s services (EXH. 21);
 - (p) falsely and/ or fraudulently advertising “\$14.95 each way. No hidden charges” (EXH. 6, 27);
 - (q) falsely and/ or fraudulently advertising \$18.00 each way and \$19.95 each way. No hidden charges. (EXH. 8, 17, 29-1);
 - (r) falsely and/ or fraudulently advertising \$5.00, \$5.95, \$10.95, \$15.00, \$20.00 fares without disclosure of additional costs knowing no such “fare” was offered (EXH. 5-3, 7, 10, 11, 12-1, 14, 20, 28-1, 30);
 - (s) falsely and/ or fraudulently advertising that it provided services (stops) to locations it did not. (EXH. 1-1, 1-2, 4-4, 4-5, 6, 7, 8, 9-1, 9-2, 12-1, 12-2, 13-1, 13-2, 15, 16, 19, 23-2, 24-1, 24-2, 25, 26, 27, 29-1, 29-2);
 - (t) falsely and/ or fraudulently advertising ALL new luxury buses, European design, seat belts (EXH. 1-2, 22);
 - (u) concealing a “cancellation” policy that charges a \$20 fee per ticket, \$10 fees to change a reservation- amounts in excess of advertised prices effectively creating a non-cancellation policy without disclosures. (EXH. 31)
 - (v) falsely and/ or fraudulently advertising routes/ destinations which are unavailable by claiming that they are full in an effort to advertise excessive ridership. (EXH. 32, 33)
 - (w) falsely and/ or fraudulently advertised a \$5.95 fare while imposing undisclosed restrictions that effectively eliminated the fare- baiting, then switching to a higher fee in Summer 2007.

6. That the Defendants’ conduct, as complaint of herein, was intended to, and did,

falsely and fraudulently represent its services and affiliations; disparage the Plaintiff's services, and mislead the public.

7. Attached hereto and incorporated herein by reference are the exhibits referred to herein above.

WHEREFORE, the Plaintiff prays that this Court enter a preliminary and permanent injunction against the Defendants and its officers from engaging in the deceptive trade practices set forth and complained of herein; requiring the Defendants and its officers to notify the public of the injunctive order pray for; the purging of Defendants' profits by virtue of its conduct; and an award of Plaintiff's attorney's fees and costs.

COUNT II (§43(a) Lanham Act 15 U.S.C §1125)

1. That at all times relevant hereto, the Plaintiff, SUBURBAN EXPRESS, LTD, an Illinois Corporation, was engaged in the business of providing transportation services to members of the public, including, but not limited to, students at the University of Illinois.
2. That the Defendant, LEX EXPRESS, INC., was similarly engaged and in competition with the Plaintiff for ridership (customers) and Defendant Frazier was at all times relevant hereto an officer of said company and the person who directed the operations of LEX EXPRESS, INC., including the conduct complained of herein.
3. That the Defendants, as more fully reflected herein, has engaged in a pattern of deceptive trade practices in an effort to compete with the Plaintiff, including, but not limited to, disseminating by commercial advertising, posting flyers, and otherwise false, misleading, and deceptive claims regarding its services and its affiliations,

including but not limited to, one or more of the following:

- (a) Falsely and/or fraudulently claiming that its buses “leave every 90 minutes”;
- (b) falsely and/ or fraudulently claiming that its routes run “24 hours a day 365 days a year.”;
- (c) placing commercial advertising for periods of time knowing that such advertising is false, and misleading in that the rates, schedule, and other information contained therein will be untrue when published with the intent to “bait” the public.
- (d) falsely and/ or fraudulently advertising that it runs every 90 minutes and fares of \$14.95 (EXH. 2-2);
- (e) falsely and/ or fraudulently advertising that it runs 7 days a week, every 90 minutes (EXH. 3, 4-3, 5-2)
- (f) falsely and/ or fraudulently advertising that it runs every 1.5 hours(90 minutes), 24 hours a day, 365 days a year (EXH. 1-1, 1-2, 4-4, 5-3, 9-1, 9-2);
- (g) falsely and/ or fraudulently advertising that it runs every 3 hours, 24 hours a day, 365 days a year (EXH. 6, 7-2, 10, 12-2, 25, 27);
- (h) falsely and/ or fraudulently advertising by posted signage that it runs every 3 hours, 24 hours a day (EXH. 11, 20);
- (i) falsely and/ or fraudulently advertising unlimited baggage and then actually charging for the same (EXH. 3);
- (j) falsely and/ or fraudulently advertising free rides while subsequently disclaiming, altering, and failing to advise of conditions or limitations. (EXH. 1-1, 4-2, 5-3, 6, 7-2, 8-2, 9-1, 12-1, 16, 24-1, 24-2, 25, 26, 27, 28-2, 13, 14); and doing so in violation of 815 ILCS 505/2P
- (k) falsely and/ or fraudulently advertising an affiliation, sponsorship, and association with the ISU (Braden) ticket office (EXH. 1-1, 4-2, 4-4); and the University of Illinois (EXH. 1-2, 4-5, 13, 14);
- (l) falsely and/ or fraudulently advertising a safety record belied by its actual inspection record (EXH. 1-1, 4-4, 9-1, 22);
- (m) falsely and/ or fraudulently advertising 24 hour live reservations (EXH. 6, 7, 8, 12-1, 29-1);
- (n) falsely and/ or fraudulently engaging in disparaging of the Plaintiff (EXH. 5-2, 29-1, 29-6);
- (o) offering incentives to individuals, including “free” transportation to tear down posters advertising Plaintiff’s services (EXH. 21);
- (p) falsely and/ or fraudulently advertising “\$14.95 each way. No hidden charges” (EXH. 6, 27);
- (q) falsely and/ or fraudulently advertising \$18.00 each way and \$19.95 each way. No hidden charges. (EXH. 8, 17, 29-1);
- (r) falsely and/ or fraudulently advertising \$5.00, \$5.95, \$10.95, \$15.00, \$20.00 fares without disclosure of additional costs knowing no such “fare” was offered (EXH. 5-3, 7, 10, 11, 12-1, 14, 20, 28-1, 30);
- (s) falsely and/ or fraudulently advertising that it provided services (stops) to locations it did not. (EXH. 1-1, 1-2, 4-4, 4-5, 6, 7, 8, 9-1,

9-2, 12-1, 12-2, 13-1, 13-2, 15, 16, 19, 23-2, 24-1, 24-2, 25, 26, 27, 29-1, 29-2);

- (t) falsely and/ or fraudulently advertising ALL new luxury buses, European design, seat belts (EXH. 1-2, 22)
- (u) concealing a "cancellation" policy that charges a \$20 fee per ticket, \$10 fees to change a reservation- amounts in excess of advertised prices effectively creating a non-cancellation policy without disclosures. (EXH. 31)
- (v) falsely and/ or fraudulently advertising routes/ destinations which are unavailable by claiming that they are full in an effort to advertise excessive ridership. (EXH. 32, 33)
- (w) falsely and/ or fraudulently advertised a \$5.95 fare while imposing undisclosed restrictions that effectively eliminated the fare- baiting, then switching to a higher fee in Summer 2007.

4. That the Defendants' conduct, as complaint of herein, was intended to, and did, falsely and fraudulently represent its services and affiliations; disparage the Plaintiff's services, and mislead the public.
5. Attached hereto and incorporated herein by reference are the exhibits referred to herein above.

WHEREFORE, the Plaintiff prays that this Court enter a preliminary and permanent injunction against the Defendants and its officers from engaging in the deceptive trade practices set forth and complained of herein; requiring the Defendants and its officers to notify the public of the injunctive order prayed for; the purging of Defendants' profits by virtue of its conduct; and an award of Plaintiff's attorney's fees and costs. Plaintiff further prays for an award to it of punitive damages, and expenses incurred by it in counteracting the effects of said conduct.

Respectfully Submitted,
SUBURBAN EXPRESS, LTD, an Illinois Corporation,

By: 
ROBERT G. KIRCHNER, one of his attorneys.

Prepared by:
Robert G. Kirchner
Attorney at Law
100 Trade Centre Drive, Suite 402
Champaign, IL 61820
Phone: 217-355-5660
Fax: 217-355-5675